

## LEGISLATIVE BILL 81

Approved by the Governor February 26, 1991

Introduced by Warner, 25

AN ACT relating to local government; to amend sections 13-804, 13-903, 48-193, 71-5034, 71-6220, 81-1164, 81-1331, 83-1,143.01, and 84-1202, Reissue Revised Statutes of Nebraska, 1943, and sections 81-8,210, 81-8,239.01, and 81-8,303, Revised Statutes Supplement, 1990; to provide that entities created by local public agencies are not state agencies; to change provisions relating to the plans of expenditures prepared by certain regional governing boards and mental retardation regions as prescribed; to harmonize provisions; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 13-804, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

13-804. (1) Any power or powers, privileges, or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state having such power or powers, ~~privilege~~ privileges, or authority, and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of ~~the~~ state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges, and authority conferred by ~~sections 13-801 to 13-807~~ the Interlocal Cooperation Act upon a public agency.

(2) Any two or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the ~~provisions of sections 13-801 to 13-807~~ act. Appropriate action by ordinance, resolution, or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.

(3) Any such agreement shall specify the

following:

(a) Its duration;  
 (b) The precise organization, composition, and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided if such entity may be legally created;

(c) Its purpose or purposes;

(d) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor;

(e) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination; and

(f) Any other necessary and proper matters.

(4) In the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall, in addition to items enumerated in subsection (3) of this section, contain the following:

(a) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board public agencies party to the agreement shall be represented; and

(b) The manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking.

(5) No agreement made pursuant to ~~sections 13-801 to 13-807~~ the act shall relieve any public agency of any obligation or responsibility imposed upon it by law except that to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made hereunder, which performance may be offered in satisfaction of the obligation or responsibility.

(6) No entity created by local public agencies pursuant to the act shall be considered a state agency, and no employee of such an entity shall be considered a state employee.

Sec. 2. That section 13-903, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

13-903. For purposes of the Political Subdivisions Tort Claims Act and sections ~~As used in sections 13-901 to 13-926,~~ 16-727, 16-728, 23-175, 39-809, and 79-489, unless the context otherwise requires:

(1) Political subdivision shall include villages, cities of all classes, counties, school districts, public power districts, and all other units of local government, including entities created by local public agencies pursuant to the Interlocal Cooperation Act. Political subdivision shall not be construed to include any contractor with a political subdivision;

(2) Governing body shall mean the village board of a village, the city council of a city, the board of commissioners or board of supervisors of a county, the board of directors of a public power district, the governing board or other governing body of an entity created by local public agencies pursuant to the Interlocal Cooperation Act, and any duly elected or appointed body holding the power and authority to determine the appropriations and expenditures of any other unit of local government;

(3) Employee of a political subdivision shall mean any one or more officers or employees of the political subdivision or any agency of the subdivision and shall include members of the governing body, duly appointed members of boards or commissions when they are acting in their official capacity, volunteer firefighters, and volunteer rescue squad personnel. Employee shall not be construed to include any contractor with a political subdivision; and

(4) Tort claim shall mean any claim against a political subdivision for money only on account of damage to or loss of property or on account of personal injury or death, caused by the negligent or wrongful act or omission of any employee of the political subdivision, while acting within the scope of his or her office or employment, under circumstances in which the political subdivision, if a private person, would be liable to the claimant for such damage, loss, injury, or death; but shall not include any claim accruing before January 1, 1970.

Sec. 3. That section 48-193, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-193. For purposes of As used in sections 48-192 to 48-1,109, unless the context otherwise requires:

(1) State agency shall include all departments, agencies, boards, courts, bureaus, and commissions of the State of Nebraska, and corporations whose the primary function of which is to act as, and while acting as, instrumentalities or agencies of the State of Nebraska, including the University of Nebraska

and the ~~four~~ state colleges, but shall not include corporations that are essentially private corporations or entities created by local public agencies pursuant to the Interlocal Cooperation Act. State agency shall not be construed to include any contractor with the State of Nebraska except and unless such contractor comes within the provisions of section 48-116;

(2) State Claims Board shall mean the board created by section 81-8,220;

(3) Employee of the state shall mean any one or more officers or employees of the state or any state agency, and shall include duly appointed members of boards or commissions when they are acting in their official capacity. State employee shall not be construed to include any employee of an entity created by local public agencies pursuant to the Interlocal Cooperation Act or any contractor with the State of Nebraska unless such contractor comes within the provisions of section 48-116;

(4) Workers' compensation claim shall mean any claim against the State of Nebraska arising under the Nebraska Workers' Compensation Act; and

(5) Award shall mean any amount determined by the State Claims Board to be payable to a claimant under sections 48-192 to 48-1,109 or the amount of any compromise or settlement under such sections. ~~48-192 to 48-1,109.~~

Sec. 4. That section 71-5034, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-5034. (1) Upon notification from the department of its final budget amount of state aid as set by the Legislature, each governing board shall prepare a plan of expenditures for the fiscal year for which such budget amount was set. Such plans of expenditures shall be submitted to the department on forms prescribed by the department not later than July 1 of the fiscal year for which such budget the amount of state aid was set.

(2) The department shall review such plans of expenditures to determine whether such plans conform with statewide plans and the minimum standards, rules, and regulations adopted pursuant to the provisions of sections 71-5001 to 71-5014 and pursuant to the provisions of Nebraska Comprehensive Community Mental Health Services Act and sections 71-5016 to 71-5040, 83-1009, and 83-1009.01. Upon examination, the Director of Public Institutions shall approve such plans of expenditures or shall require such changes or additional

information from any governing board as may be necessary to permit such approval. No state matching funds shall be allocated to a mental health region prior to the approval of a plan of expenditure.

Sec. 5. That section 71-6220, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-6220. State agency shall include every state office, department, board, commission, regulatory entity, and agency of the state and, when provided specifically by law to be a state agency for purposes of this section, programs and activities involving less than the full responsibility of a state agency.

Sec. 6. That section 81-8,210, Revised Statutes Supplement, 1990, be amended to read as follows:

81-8,210. For purposes of the State Tort Claims Act, unless the context otherwise requires:

(1) State agency shall include all departments, agencies, boards, bureaus, and commissions of the State of Nebraska and corporations the primary function of which is to act as, and while acting as, instrumentalities or agencies of the State of Nebraska but shall not include corporations that are essentially private corporations or entities created by local public agencies pursuant to the Interlocal Cooperation Act. State agency shall not be construed to include any contractor with the State of Nebraska;

(2) State Claims Board shall mean the board created by section 81-8,220;

(3) Employee of the state shall mean any one or more officers or employees of the state or any state agency and shall include duly appointed members of boards or commissions when they are acting in their official capacity. State employee shall not be construed to include any employee of an entity created by local public agencies pursuant to the Interlocal Cooperation Act or any contractor with the State of Nebraska;

(4) Tort claim shall mean any claim against the State of Nebraska for money only on account of damage to or loss of property or on account of personal injury or death caused by the negligent or wrongful act or omission of any employee of the state, while acting within the scope of his or her office or employment, under circumstances in which the state, if a private person, would be liable to the claimant for such damage, loss, injury, or death but shall not include any claim accruing before January 1, 1970, and any claim against

an employee of the state for money only on account of damage to or loss of property or on account of personal injury or death caused by the negligent or wrongful act or omission of the employee while acting within the scope of his or her employment occurring on or after August 25, 1989; and

(5) Award shall mean any amount determined by the State Claims Board to be payable to a claimant under section 81-8,211 or the amount of any compromise or settlement under section 81-8,218.

Sec. 7. That section 81-8,239.01, Revised Statutes Supplement, 1990, be amended to read as follows:

81-8,239.01. (1) For purposes of sections 44-1615, 44-1616, and 81-8,239.01 to 81-8,239.04, unless the context otherwise requires, the definition of state agencies found in section 81-8,210 shall apply, except that such term shall not include the Board of Regents of the University of Nebraska.

(2) There is hereby established a Risk Management Program for the State of Nebraska. The program shall consist of the systematic identification of exposures to risk of loss as provided in sections 11-201 to 11-203, 13-911, 25-2165, 44-1615, 44-1616, 48-194, 48-197, 48-1,103, 48-1,104, 48-1,107, 48-1,109, 81-8,212, 81-8,220, 81-8,225, 81-8,226, 81-8,233, 81-8,239.01 to 81-8,239.07, and 81-8,300 and shall include the appropriate methods for dealing with such exposures in relation to the state budget pursuant to such sections. Such program shall be administered by the Risk Manager and shall include the operations of the State Claims Board and other operations provided in such sections.

(3) Under the Risk Management Program, the Risk Manager shall have the authority and responsibility to:

(a) Employ any personnel necessary to administer the Risk Management Program;

(b) Develop and maintain loss and exposure data on all state property and liability risks;

(c) Develop and recommend risk reduction or elimination programs for the state and its agencies and establish, implement, and monitor a statewide safety program;

(d) Determine which risk exposures shall be insured and which risk exposures shall be self-insured or assumed by the state;

(e) Establish standards for the purchase of necessary insurance coverage or risk management services

at the lowest costs, consistent with good underwriting practices and sound risk management techniques;

(f) Be the exclusive negotiating and contracting agency to purchase insurance or risk management services and, after consultation with the state agency for which the insurance or services are purchased, enter into such contracts on behalf of the state and its agencies, officials, and employees to the extent deemed necessary and in the best interest of the state, and authorize payment for such purchase out of the appropriate funds created by section 81-8,239.02;

(g) Determine whether the state suffered a loss for which self-insured property loss funds have been created and authorize and administer payments for such loss from the State Self-Insured Property Fund for the purpose of replacing or rebuilding state property;

(h) Perform all duties assigned to the Risk Manager under the Nebraska Workers' Compensation Act and sections 11-201 to 11-203, 81-8,239.05, 81-8,239.07, and 84-1603;

(i) Approve the use of risk management pools by any department, agency, board, bureau, commission, or council of the State of Nebraska; and

(j) Recommend to the Legislature such legislation as may be necessary to carry out the purposes of sections 11-201 to 11-203, 13-911, 25-2165, 44-1615, 44-1616, 48-194, 48-197, 48-1,103, 48-1,104, 48-1,107, 48-1,109, 81-8,212, 81-8,220, 81-8,225, 81-8,226, 81-8,233, 81-8,239.01 to 81-8,239.07, and 81-8,300 and make appropriation requests for the administration of the Risk Management Program and the funding of the separate funds administered by the Risk Manager.

(4) No official or employee of any entity created by local public agencies pursuant to the Interlocal Cooperation Act shall be considered a state official or employee for purposes of sections 81-8,239.01 to 81-8.239.06.

Sec. 8. That section 81-8,303, Revised Statutes Supplement, 1990, be amended to read as follows:

81-8,303. For purposes of As used in the State Contract Claims Act, unless the context otherwise requires:

(1) Contract claim shall mean a claim against the state involving a dispute regarding a contract between the State of Nebraska or a state agency and the claimant other than employment contracts covered by the State Personnel System or entered into pursuant to the

State Employees Collective Bargaining Act;

(2) Contracting agency shall mean the state agency which is a party to a contract which gives rise to the contract claim; and

(3) State agency shall mean all departments, agencies, boards, bureaus, and commissions of the State of Nebraska and corporations the whose primary function of which is to act as, and while acting as, instrumentalities or agencies of the State of Nebraska but shall not include corporations that are essentially private corporations or entities created by local public agencies pursuant to the Interlocal Cooperation Act. State agency shall not be construed to include any contractor with the State of Nebraska.

Sec. 9. That section 81-1164, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1164. As used in sections 81-1162 to 81-1169 For purposes of the Forms Management Program Act, unless the context otherwise requires:

(1) State agency shall mean any state constitutional office, state administrative department, or any state board or commission established by an act of the Legislature, except the University of Nebraska, the Nebraska state colleges, and their respective governing boards. State agency shall not be construed to mean any entity created by local public agencies pursuant to the Interlocal Cooperation Act;

(2) Director shall mean the Director of Administrative Services;

(3) Department shall mean the Department of Administrative Services; and

(4) Form shall mean every piece of paper, printed or reproduced by whatever means, with blank spaces left for entry of additional data which is used in any transaction between a state agency and any person, as defined in section 49-801.

Sec. 10. That section 81-1331, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1331. As used in For purposes of sections 81-1330 to 81-1334, state employee shall mean any employee of the state or of any state agency, specifically including all administrative, professional, academic, and other personnel of the University of Nebraska, the four state colleges, the technical community colleges, and the State Department of Education, but excluding any employee or officer of the state whose salary is set by the Constitution of



Nebraska or by statute. An employee of any local government or entity, including any entity created by local public agencies pursuant to the Interlocal Cooperation Act, shall not be considered a state employee for purposes of such sections.

Sec. 11. That section 83-1,143.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1,143.01. Each mental retardation region shall biennially prepare a proposed budget for the biennium beginning July 1 of each odd-numbered year. The budgets shall show all expenditures proposed by the mental retardation region. Such budgets shall be submitted by August 1 of each even-numbered year to the Department of Public Institutions. The Department of Public Institutions shall review such budgets and attach its recommendations thereto and transmit them to the Director of Administrative Services not later than September 15 of each even-numbered year. The final budget amount of state aid for each mental retardation region shall be set by the Legislature.

Sec. 12. That section 84-1202, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-1202. As used in sections 84-1201 to 84-1226 For purposes of the Records Management Act, unless the context otherwise requires:

(1) Agency shall mean any department, division, office, commission, court, board, or elected, appointed, or constitutional officer, except individual members of the Legislature, or any other unit or body, however designated, of the executive, judicial, and legislative branches of the state government or of the government of any local political subdivision;

(2) Agency head shall mean the chief or principal official or representative in any such agency, or the presiding judge of any court, by whatever title known. ~~When ; and when~~ an agency consists of a single official, the agency and the agency head ~~are~~ shall be one and the same;

(3) State agency shall mean an agency of the state government; ~~and a local~~

(4) Local agency shall mean an agency of a local political subdivision, including any entity created by local public agencies pursuant to the Interlocal Cooperation Act;

~~(4)~~ (5) Local political subdivision shall mean any county, city, village, township, district, authority, or other public corporation or political

entity, whether existing under charter or general law, including any entity created by local public agencies pursuant to the Interlocal Cooperation Act. Local political subdivision shall not include a city of the metropolitan class, except that a metropolitan-class city or a district or other unit which by law is considered an integral part of the state government, is not included in the term.

~~(5)~~ (6) Record shall mean any book, document, paper, photograph, microfilm, sound recording, magnetic storage medium, or other material regardless of physical form or characteristics, created or received pursuant to law, charter, or ordinance or in connection with any other activity relating to or having an effect upon the transaction of public business;

~~(6)~~ (7) State record shall mean a record which normally is maintained within the custody or control of a state agency, or any other record which is designated or treated as a state record according to general law;

~~(7)~~ (8) Local record shall mean a record of a local political subdivision or of any agency thereof, unless designated or treated as a state record under general law;

~~(8)~~ (9) Essential record shall mean a state or local record which is within one or the other of the following categories, and which shall be preserved pursuant to ~~sections 84-1201 to 84-1226~~ the Records Management Act:

(a) Category A. Records containing information necessary to the operations of government under all conditions, including a period of emergency created by a disaster; or

(b) Category B. Records not within Category A, but which contain information necessary to protect the rights and interests of persons, or to establish or affirm the powers and duties of state or local governments in the resumption of operations after a disaster;

~~(9)~~ (10) Preservation duplicate shall mean a copy of an essential record, which is used for the purpose of preserving the record pursuant to ~~sections 84-1201 to 84-1226~~ the act; and

~~(10)~~ (11) Disaster shall mean any occurrence of fire, flood, storm, earthquake, explosion, epidemic, riot, sabotage, or other conditions of extreme peril resulting in substantial injury or damage to persons or property within this state, whether such occurrence is caused by an act of nature or of man, including an enemy of the United States.

Sec. 13. That original sections 13-804, 13-903, 48-193, 71-5034, 71-6220, 81-1164, 81-1331, 83-1,143.01, and 84-1202, Reissue Revised Statutes of Nebraska, 1943, and sections 81-8,210, 81-8,239.01, and 81-8,303, Revised Statutes Supplement, 1990, are repealed.

Sec. 14. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.